

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GARY INGRAM

Claimant

VS.

GARY INGRAM

Respondent

AND

FARM BUREAU

Insurance Carrier

Docket No. 213,196

ORDER

Respondent appeals from a preliminary hearing Order of July 16, 1996, wherein Administrative Law Judge John D. Clark granted claimant benefits finding claimant was an employee for purposes of the Workers Compensation Act and further finding that claimant did elect to come under the provisions of the Kansas Workers Compensation Act.

ISSUES

- (1) Whether claimant was an employee of respondent as defined by the Kansas Workers Compensation Act on the date of the accident.
- (2) Whether claimant failed to elect under K.S.A. 44-542a to come under the provisions of the Workers Compensation Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds for the purpose of preliminary hearing that the Order of Administrative Law Judge John D. Clark should be affirmed.

Claimant, a self-employed sole proprietor, was involved in a trucking business in Wichita, Kansas. He contacted Farm Bureau Insurance to obtain insurance coverage under the Workers Compensation Act. The dispute arises regarding whether claimant intended the policy

to cover himself or just his employees. At the time the policy was created, claimant was under obligation with the City of Wichita to obtain workers compensation coverage for himself and his employees. Claimant had no employees at that particular time although he did anticipate adding part-time employees at a later date.

Claimant contends he advised the insurance representative he wanted coverage for both himself and his future employees. Respondent's insurance representative contests this claim, testifying that claimant did not want to pay the higher premiums associated with providing coverage for both his employees and himself. Unfortunately, the documentation provided for the Appeals Board review is every bit as controversial and conflicting as the testimony.

After reviewing the evidence, the Appeals Board finds that claimant did intend to provide insurance for himself under the Workers Compensation Act. Claimant's intentions when entering into the contract with Farm Bureau are sufficient for preliminary hearing purposes to convince the Appeals Board that claimant was an employee of respondent's trucking company and was intended to be included under the workers compensation coverage provided with Farm Bureau Insurance.

Respondent further contends that claimant failed to file an election as required under K.S.A. 44-542a. A review of the language of the applicable statute verifies that while it is claimant's obligation to obtain insurance coverage, the statute requires the insurance company or its agent to file the appropriate election. As such, the Appeals Board finds that the failure to file an election in this instance will not defeat claimant's request for coverage under the Workers Compensation Act.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated July 16, 1996, is affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

c: Jack Shelton, Wichita, KS
Darla J. Lilley, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director